



Case Summaries May 19, 2023

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OPINIONS

TEXAS CITIZENS PARTICIPATION ACT

Interpretation and Application

USA Lending Grp., Inc. v. Winstead PC, ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[21-0437](#)]

This case presents the issue of whether a legal-malpractice plaintiff produced sufficient evidence to survive a motion to dismiss under the Texas Citizens Participation Act.

USA Lending Group retained Winstead PC to sue a former employee for breach of fiduciary duty. Though Winstead obtained a default judgment against the former employee declaring USA Lending the owner of certain assets the employee had misappropriated, Winstead failed to also seek and obtain monetary damages. USA Lending sued Winstead for malpractice, and Winstead filed a motion to dismiss under the Texas Citizens Participation Act. USA Lending disputed the applicability of the Act and argued that clear and specific evidence supported each essential element of its claims, precluding dismissal under the Act. The trial court denied Winstead's motion, but the court of appeals reversed and ordered the case dismissed.

The Supreme Court reversed. Assuming but not deciding that the Act applies, the Court held that USA Lending put on sufficient evidence to avoid dismissal. Winstead challenged two elements of USA Lending's malpractice claim: causation and damages. As to causation, the Court concluded that evidence of USA Lending's out-of-pocket expenses to acquire and maintain the misappropriated assets sufficed to show some specific, demonstrable injury traceable to Winstead's conduct. As to damages, the Court considered USA Lending's testimony linking the assets to a competitor company operated by the former employee's wife, coupled with expert testimony about the laws of fraudulent transfer and community property in the relevant jurisdiction. The Court deemed this evidence sufficient to rationally support the inference that USA Lending could have collected on a judgment for monetary damages against the former employee, had one been entered. Because the Act bars dismissal of claims if clear and specific evidence supports each essential element, the Court remanded the case to the trial court for further proceedings.

GOVERNMENTAL IMMUNITY

Condemnation Claims

Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1, ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[21-0507](#)]

The issue in this case is whether governmental immunity bars a condemnation suit brought by one political subdivision against another.

The Improvement District and the Irrigation District provide water and irrigation services in Hidalgo County. The Irrigation District operates an open irrigation outtake canal in McAllen through which most of Edinburg’s drinking water flows. The Improvement District operates an underground irrigation pipeline along the right-of-way for Bicentennial Boulevard in McAllen. The Improvement District entered into an agreement with the City of McAllen to extend the irrigation pipeline in conjunction with the City’s northward extension of Bicentennial Boulevard. The route of the proposed pipeline extension crosses the Irrigation District’s canal.

The Improvement District offered to purchase an easement from the Irrigation District. After negotiations between them failed, the Improvement District filed a condemnation action. The trial court appointed special commissioners who awarded the Irrigation District \$1,900 in damages. The Irrigation District objected to the commissioners’ award, arguing that the Improvement District could not establish the “paramount public importance” of its proposed pipeline. Under the paramount-public-importance doctrine, a condemnation authority cannot condemn land that is already devoted to public use if doing so would effectively destroy the existing public use, unless that authority can show that the intended use is of “paramount public importance” and cannot be accomplished by any other means.

Before the trial court ruled on the objection, the Irrigation District filed a plea to the jurisdiction asserting that, as a governmental entity, it is immune from condemnation suits and that the Legislature has not waived that immunity. The trial court granted the plea and dismissed the suit. The court of appeals affirmed.

The Supreme Court reversed, holding that sovereign immunity, and by extension governmental immunity, does not apply to the Improvement District’s condemnation suit. The Court first reiterated the modern justifications for sovereign immunity and analyzed how the doctrine’s modern justifications define its boundaries and inform whether it applies in the first instance. Next, the Court analyzed the historical development of condemnation proceedings in Texas with a particular focus on condemnations of public land. The Court noted that its jurisprudence has long resolved issues arising from the condemnation of land already dedicated to a public use through application of the paramount-public-importance doctrine without reference to immunity. Finally, the Court synthesized the modern justifications for sovereign immunity with the way its precedent has developed in both the sovereign-immunity and eminent-domain contexts to hold that the Irrigation District is not immune from the Improvement District’s condemnation suit.

GOVERNMENTAL IMMUNITY

Contract Claims

Pepper Lawson Horizon Int'l Grp., LLC v. Tex. S. Univ., ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) (per curiam) [[21-0966](#)]

The main issue on appeal is whether a construction contractor's claim against a university falls within a statutory waiver of governmental immunity that applies to a claim for breach of an express contract provision brought by a party to the written contract.

The university contracted with representatives of two construction companies who, as part of a joint venture, subsequently formed as Pepper Lawson to build student housing. Pepper Lawson completed the project more than six months after the contractual deadline. Invoking equitable adjustments and justified time extensions under contractual provisions, Pepper Lawson invoiced the university for an adjusted remaining balance due. The university refused to pay that amount, alleging that several contract provisions precluded the adjustments and time extensions. Pepper Lawson sued the university for breach of contract to recover the amount due and sought interest and attorney's fees under a statutory provision incorporated into the contract. The university asserted its immunity in a plea to the jurisdiction and alleged that the statutory waiver is inapplicable because Pepper Lawson failed to plead a claim covered by the provision. The trial court denied the university's plea, but on interlocutory appeal, the court of appeals reversed and rendered judgment dismissing the suit. For the first time, the university argued that Pepper Lawson lacked standing because the entity was subsequently formed after the contract and was not a party to the written contract.

The Supreme Court reversed the court of appeals' judgment and remanded the case to the trial court, holding that Pepper Lawson pleaded a cognizable breach-of-contract claim and sought categories of damages, including interest and attorney's fees, within the statutory waiver. Pepper Lawson was not required to prove its contract case to establish that the waiver applies. Finally, the Court did not reach the university's new standing argument to allow Pepper Lawson the opportunity to develop the record and amend its pleadings.

JURISDICTION

Personal Jurisdiction

LG Chem Am., Inc. v. Morgan, ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[21-0994](#)]

The issue in this case is whether nonresident defendants' purposeful contacts with Texas are sufficiently related to a plaintiff's products-liability claims to support the exercise of specific personal jurisdiction.

Tommy Morgan alleged that he was injured when a lithium-ion battery he used to charge an e-cigarette exploded in his pocket. Morgan sued several defendants, including LG Chem, the South Korean manufacturer of the battery, and LG Chem America, its American distributor. LG Chem and LG Chem America each filed special appearances, which the trial court denied. The court of appeals affirmed.

LG Chem and LG Chem America petitioned for review. They argued that they only sold and distributed the battery that injured Morgan to industrial manufacturers, not individual consumers like Morgan, so their Texas contacts were insufficiently related to the plaintiff's claims to justify haling them into a Texas court.

The Supreme Court affirmed. The Court noted that the exercise of specific personal jurisdiction involves two components: first, the defendant must purposefully avail itself of the privilege of conducting activities in the forum state; and second, the plaintiff's claim must arise out of or relate to the defendant's contacts with the forum. The Court held that analyzing personal jurisdiction requires evaluation of a defendant's contacts with the forum—Texas—as a whole, not a particular market segment within Texas the defendant may have targeted. LG Chem and LG Chem America did not dispute that they purposefully availed themselves of the privilege of doing business in Texas by selling and distributing into Texas the same product that allegedly injured Morgan. The Court therefore held that Morgan's products-liability claims were sufficiently related to the defendants' Texas contacts to satisfy due process and subject LG Chem and LG Chem America to specific personal jurisdiction in Texas.

JURISDICTION

Subject Matter Jurisdiction

Ditech Servicing, LLC v. Perez, ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[21-1109](#)]

At issue in this case is whether a county court at law, exercising jurisdiction pursuant to its independent, county-specific statute, is subject to the same jurisdictional limitations as if the court were exercising its concurrent constitutional county court jurisdiction.

Perez purchased property subject to a deed of trust held by Ditech's predecessor in interest. After Ditech initiated foreclosure proceedings, Perez filed suit in a Hidalgo County court at law. Perez asserted that Ditech waived its right to foreclose on the property, and Ditech counterclaimed for judicial foreclosure.

The county court at law rendered judgment for Perez. Ditech appealed, and the court of appeals reversed and remanded. On remand, Ditech moved for summary judgment on its judicial foreclosure counterclaim. In response, Perez argued that county courts at law lack subject-matter jurisdiction over actions requiring the resolution of issues of title to real property. The county court at law rejected Perez's jurisdictional challenge and granted Ditech's motion for summary judgment. Perez appealed, challenging only the county court at law's subject-matter jurisdiction. The court of appeals agreed with Perez, vacated the judgment, and dismissed the case for lack of subject-matter jurisdiction.

The Supreme Court reversed and rendered judgment for Ditech. Perez argued that the jurisdictional limitations on constitutional county courts—including the statutory provision depriving such courts of jurisdiction in a suit for the recovery of land—also apply to county courts at law. The Supreme Court explained that although county courts at law generally have concurrent jurisdiction with constitutional county courts, here the Hidalgo County court at law was exercising jurisdiction pursuant to its independent, county-specific statute, which granted the court jurisdiction in addition to its concurrent constitutional county court jurisdiction. Therefore, it was not subject to the same jurisdictional limitations as if the court were exercising its concurrent constitutional county court jurisdiction. Accordingly, the Supreme Court held that the Hidalgo County court at law had jurisdiction over Ditech's counterclaim.

OIL AND GAS

Royalty Payments

Freeport-McMoRan Oil & Gas LLC v. 1776 Energy Partners, LLC, ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[22-0095](#)]

The issue in this case is whether an operator of oil-and-gas wells was entitled to withhold production payments under the Texas Natural Resources Code’s safe-harbor provisions.

Two energy-production companies, Ovintiv and 1776 Energy, entered into a series of agreements to jointly develop and produce minerals from oil-and-gas leases they owned in Karnes County. As the operator of the leases, Ovintiv was responsible for distributing production payments from these leases to 1776 Energy. A third party, Longview Energy, later sued 1776 Energy and obtained a judgment ordering 1776 Energy to transfer its interest in the Karnes County leases to Longview and imposing a constructive trust on those interests until the transfer occurred. Based on this judgment, Ovintiv suspended payments to 1776 Energy. 1776 Energy sued.

The court of appeals in the Longview suit reversed the judgment, and the Supreme Court affirmed. After that mandate issued, Ovintiv paid the withheld funds to 1776 Energy. 1776 Energy accepted the payments but pursued this suit to collect interest on the withheld payments. The trial court granted summary judgment for Ovintiv, determining that the statutory safe-harbor provisions allowed it to withhold the funds without interest. The court of appeals reversed, holding that fact issues surrounding the safe-harbor provisions precluded summary judgment.

The Court reversed and held that the safe-harbor provisions applied as a matter of law for two reasons. First, the Natural Resources Code allows withholding payments without interest when a title dispute “would affect distribution of payments.” The Court held that “would affect” means the title dispute was expected or likely to influence or alter the distribution of the payments. Here, the Longview lawsuit “would affect” the distribution of payments because it would require that payments be made either to Longview or to 1776 Energy.

Second, the Code allows a payor to withhold payments without interest when the payor has reasonable doubt that the payee has clear title to the proceeds. Here, Ovintiv had a reasonable doubt that 1776 Energy had clear title because the constructive trust established by the Longview suit clouded title. In fact, the very existence of the underlying dispute, so long as it was not frivolous, clouded title. Thus, the Court reversed the court of appeals and reinstated the trial court’s final judgment dismissing 1776 Energy’s claims.

ATTORNEYS

Fees

Pecos Cnty. Appraisal Dist. v. Iraan-Sheffield Indep. Sch. Dist., ___ S.W.3d ___, 2023 WL ___ (Tex. May 19, 2023) [[22-0313](#)]

The issue in this case is whether the district court properly dismissed a suit because a school district employed an attorney on a contingent-fee basis. Iraan-Sheffield ISD hired attorney D. Brent Lemon to pursue claims regarding the Pecos County Appraisal District’s allegedly inaccurate valuation of Kinder Morgan’s mineral interests. The school district is a taxing unit within the Appraisal District. The fee agreement with Lemon specified his compensation as 20 percent of amounts received by the school district that were related to claims Lemon pursued.

Under the Tax Code, Lemon brought a claim before the Appraisal District's Appraisal Review Board alleging erroneous appraisals of Kinder Morgan's properties. After the Review Board denied relief, Lemon brought an appeal in district court. Kinder Morgan filed a Texas Rule of Civil Procedure 12 motion to show authority, arguing that Lemon's contingent-fee agreement was not allowed under Texas law. The district court granted the motion and dismissed the suit with prejudice. The court of appeals reversed, reasoning that the fee agreement was permitted under section 6.30(c) of the Tax Code.

The Supreme Court did not agree with the court of appeals' reasoning. The Court held the contingent-fee agreement was not permitted under Texas law. Political subdivisions possess only such powers as are expressly provided by statute or impliedly conferred by the Legislature. Implied powers are limited to powers essential and indispensable to the exercise of expressed powers. Section 6.30 does not expressly permit the agreement, because that section is limited to the collection of delinquent taxes. Taxes are not delinquent until they are imposed by the taxing unit, and here no taxes had been imposed on the higher valuations the school district sought. There was also no basis under Texas law for concluding that authority to make the contingent-fee agreement was impliedly conferred on school districts.

Even though the Court agreed with the district court that the contingent-fee agreement was not permitted, the Court concluded that the district court should not have dismissed the suit with prejudice. The Court concluded that Rule 12 was a proper vehicle for challenging the legality of the agreement, but the Court interpreted the rule as requiring the district court to give the school district a reasonable opportunity to adjust its arrangement with Lemon or hire another attorney. The Court therefore affirmed the court of appeals insofar as it reversed the dismissal of the suit, and the Court remanded the case to the district court for further proceedings.